

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHAPTER 403]

Response to Public Comment

Subpart A. GENERAL PROVISIONS

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

General Comments.

Comment:

Section 1201(f) of the Pennsylvania Race Horse Development and Gaming Act (the "act") is explicit about the majority (qualified or regular) that must make certain decisions under the act. While delegation to staff or individual members may be desirable for administrative efficiency, we are concerned that any staff action taken pursuant to the proposed delegation and emergency order regulations could be challenged as contravening the legislature's explicit will in section 1201(f). In light of the explicit language of section 1201(f), we believe that authority for the Board to allow this delegation must be enacted by the General Assembly. To the extent that Board authority may be properly delegated, the City believes that the Board should adopt clear standards for exercise of the delegated authority under proposed sections 403.5 and 403.6.

Response:

The Board declines to accept this comment. The Board believes the criteria contained in this regulation provide clear standards.

§ 403.6. Emergency orders.

Comment:

The City is concerned that municipal enforcement actions by City departments, including police, fire, licenses and inspections and public health, may be subject to challenge by the proposed regulation 403.6(c), which would permit a temporary emergency order, *inter alia*, "to preserve the public health, welfare, or safety." We believe it is important for the Board to clarify that such actions should not be misinterpreted as an attempt to preempt through administrative fiat important core municipal functions. Any such preemption would be misinterpretation of both the Board's authority and existing law, and contrary to public policy.

Response:

The Board agrees that this regulation is not intended to preempt important core municipal functions.

Comment:

We believe this regulation should be modified to make it clear that the burden of proof in initially seeking an emergency order is on the Office of Enforcement Counsel. We also believe that this regulation should require a standard of proof and showing of irreparable harm on the Office similar to that the Board must find to sustain the Orders.

Response:

The Board declines to accept this comment. Section 403.6(c) clearly specifies the criteria that the Office of Enforcement Counsel must meet before the Executive Director will issue a temporary emergency order.

Comment:

It is respectfully requested that the Board amend § 403.6 by adding provisions to clarify that the Executive Director of the Board shall not have any supervisory authority over the decisions of the Office of Enforcement Counsel as to whether to institute prosecutions or seek temporary orders. Additionally, the Board should amend § 403.6 to create "walls of division" between the Executive Director and the Office of Enforcement Counsel which eliminate the appearance of bias. Alternatively, it is suggested that a member of the Board be designated to sit as the presiding officer over such emergency order matters in

order to avoid the possible commingling of adjudicative and prosecutorial functions.

Response:

The Board declines to accept this comment. Existing Board regulations adequately address this issue.

Comment:

Section 403.6(i) provides that the Executive Director or their designee may sign subpoenas to secure the attendance of witnesses and the production of documents regarding the informal hearing contemplated by Section 403.6. It is unclear from the language of this section whether parties which are the subject of an emergency order may obtain subpoenas from the Director. Accordingly, this section should be clarified to provide that parties who are the subject of an emergency order and an informal hearing related to that order have the ability to obtain subpoenas issued by the Executive Director in furtherance of the presentation of their case at the informal hearing. This clarification ensures that fundamental fairness will be applied to the proceedings on behalf of persons subject to the emergency orders and provides that such a party will have the opportunity to fully and fairly present a defense to the allegations leveled against the party.

Response:

The Board declines to accept this comment.